

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #9	CCRB Case #: 201903406	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/11/2019 10:00 AM	Location of Incident: in front of § 87(2)(b) at the 52 Pct. stationhouse, at § 87(2)(b) inside § 87(2)(b)	Precinct: 52	18 Mo. SOL 10/11/2020	EO SOL 5/28/2021	
Date/Time CV Reported Sun, 04/21/2019 3:50 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 04/21/2019 3:50 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Cepeda	19206	958389	052 PCT
2. POM Anthony Saline	12924	962081	052 PCT
3. SGT Jonathan Rivera	02049	949550	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Fernandez	00582	960529	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera stopped § 87(2)(b)	§ 87(2)(b)
C.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera stopped § 87(2)(b)	§ 87(2)(b)
D.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera frisked § 87(2)(b)	§ 87(2)(b)
E.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera frisked § 87(2)(b)	§ 87(2)(b)
F.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
G.SGT Jonathan Rivera	Abuse: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera seized § 87(2)(b)'s property.	§ 87(2)(b)
H.SGT Jonathan Rivera	Abuse: At the 52nd Precinct stationhouse, Sergeant Jonathan Rivera searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
I.POM Anthony Saline	Abuse: At the 52nd Precinct stationhouse, Police Officer Anthony Saline did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]
J.SGT Jonathan Rivera	Abuse: Sergeant Jonathan Rivera entered § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
K.SGT Jonathan Rivera	Abuse: Sergeant Jonathan Rivera searched § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]

Case Summary

On April 21, 2019, § 87(2)(b) filed this complaint on behalf of himself, his friends, § 87(2)(b) and § 87(2)(b) and his uncle, § 87(2)(b) via the CCRB's online complaint system.

On April 11, 2019, at approximately 10:00 a.m., in front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera, along with his partner Police Officer Anthony Saline, both of the 52nd Precinct, stopped § 87(2)(b) § 87(2)(b) and § 87(2)(b) who were sitting in a parked vehicle. **(Allegations A, B, and C: Abuse of Authority, Stop § 87(2)(g))** After approach, PO Saline smelled marijuana coming from the vehicle, and he asked the occupants to exit. Upon taking § 87(2)(b) and § 87(2)(b) from the vehicle, Sgt. Rivera frisked them **(Allegations D and E: Abuse of Authority, Frisk § 87(2)(g))** Sgt. Rivera and PO Saline searched § 87(2)(b)'s vehicle **(Allegation F: Abuse of Authority, Search of vehicle – § 87(2)(g))** After All three individuals were arrested and removed to the 52nd Precinct stationhouse and § 87(2)(b)'s vehicle was seized and also removed to the stationhouse and searched **(Allegation G: Abuse of Authority, Seizure of property – § 87(2)(g))** **(Allegations H: Abuse of Authority, Search of vehicle – § 87(2)(g))**.

At the stationhouse, § 87(2)(b) requested to be taken to the hospital because he was not allowed to use his cane inside the holding cell; however, he was not taken to the hospital **(Allegation I: Abuse of Authority, Refusal to provide medical attention – § 87(2)(g))**.

After lodging the individuals at the stationhouse, Sgt. Rivera, PO Saline, Police Officer Jose Cepeda, and additional officers returned to § 87(2)(b) § 87(2)(b) in the Bronx, § 87(2)(b)'s apartment to investigate allegations that he had an illegal firearm. There, they asked § 87(2)(b) to sign a consent to search form, and ultimately entered and searched the apartment **(Allegation J: Abuse of Authority, Entry of Premises – § 87(2)(g))** **(Allegations K: Abuse of Authority, Search of Premises – § 87(2)(g))**.

The investigation obtained NYPD BWC footage captured by cameras worn by Sgt. Rivera, PO Cepeda, and PO Saline **(Board Review 03)**. § 87(2)(g), § 87(4-b)

Additionally, investigation obtained stationary video footage from a building neighboring § 87(2)(b) **(Board Review 01)** and **(Board Review 02)**.

§ 87(2)(b) was arrested § 87(2)(b), § 87(2)(b) was arrested § 87(2)(b), and § 87(2)(b) was issued a Desk Appearance Ticket for possessing marijuana during this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera stopped § 87(2)(b)

It is undisputed that at the time officers approached § 87(2)(b)'s vehicle, they were aware that § 87(2)(b) was wanted on an open I-Card with probable cause to arrest because of an assault he committed in September of 2018 **(Board Review 27)**. During the investigation of the assault, the 52nd Precinct Detective Squad determined that § 87(2)(b) drove a § 87(2)(b) **(Board Review 04)**.

PO Saline stated that at the time of the incident, he, Sgt. Rivera, PO Cepeda, and PO Fernandez were investigating an allegation that § 87(2)(b) had a firearm **(Board Review 06)**. He knew that § 87(2)(b) lived somewhere on § 87(2)(b) and that he owned a black car with red flames on the side of it. PO Cepeda and PO Fernandez were on foot, posted by a black vehicle with red flames on § 87(2)(b) in the Bronx. PO Saline and Sgt. Rivera were in the area in their marked police vehicle.

PO Saline added that after being informed by PO Cepeda and PO Fernandez that an individual got into the vehicle they were watching; he and Sgt. Rivera approached the vehicle. Immediately upon approach of the driver side window, PO Saline positively identified § 87(2)(b) § 87(2)(b) was arrested for third degree assault (**Board Review 28**). § 87(2)(g)

People v. Debour, 28 A.D.2d 694 (1967) (**Board Review 29**) Officers may stop an individual when they reasonably believe that the person is committing, has committed, or is about to commit a crime.

§ 87(2)(g)

Allegation (B) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera stopped § 87(2)(b)

Allegation (C) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera stopped § 87(2)(b)

Allegation (D) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera frisked § 87(2)(b)

Allegation (E) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera frisked § 87(2)(b)

Allegation (F) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Saline approached the driver's side and Sgt. Rivera approached the passenger side of § 87(2)(b)'s vehicle. It is also undisputed that shortly after approaching § 87(2)(b)'s parked vehicle, PO Saline told § 87(2)(b) that he smelled the odor of marijuana in the vehicle. He then instructed all occupants out of the vehicle and conducted a search of the vehicle; ultimately, recovering marijuana that belonged to § 87(2)(b)

§ 87(2)(b) stated to the investigation that he did not smoke marijuana in his vehicle or have marijuana on his person at that time; however, he does smoke marijuana in his home. § 87(2)(b) stated that his clothes did not have an odor of marijuana at the time of this incident. (**Board Review 05**)

§ 87(2)(b) added that he believed that § 87(2)(b) and § 87(2)(b) were frisked by the officers after being taken out of his vehicle; however, he did not see that happen.

Both § 87(2)(b) and § 87(2)(b) failed to cooperate with this investigation.

The video surveillance footage obtained from § 87(2)(b) shows PO Saline and Sgt. Rivera approach the vehicle and take the occupants out (**Board Review 30**). Before the 45 second mark, only § 87(2)(b) is taken out of the vehicle. Between 45 seconds and 1:54 the video frame freezes, and no movement is depicted. At 1:54, § 87(2)(b) is standing at the back of the vehicle. At 2:07, Sgt. Rivera is depicted taking § 87(2)(b) out of the vehicle, at which time he frisks § 87(2)(b)

Because § 87(2)(b) stated that he smokes marijuana in his home and acknowledged that § 87(2)(b) had marijuana on his person at the time of the incident, § 87(2)(g)

§ 87(2)(g)

Additionally, because Sgt. Rivera is depicted frisking § 87(2)(b) § 87(2)(g)

People v. Chestnut, 43 A.D.2d 260 (**Board Review 08**). The smell of marijuana alone gives officers probable cause to search an automobile and its occupants.

§ 87(2)(g)

Allegation (G) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Sergeant Jonathan Rivera seized § 87(2)(b)'s property.

Allegation (H) Abuse of Authority: At the 52nd Precinct stationhouse, Sergeant Jonathan Rivera searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b)

When § 87(2)(b) appeared at the CCRB on May 20, 2019, he stated that his vehicle still had not been returned to him after it was taken to the stationhouse on April 11, 2019. Just before § 87(2)(b) was taken from the front of § 87(2)(b) to the 52nd Precinct stationhouse, § 87(2)(b) saw Sgt. Rivera give the keys of his vehicle to another officer. While at the stationhouse, § 87(2)(b) later learned that his vehicle was searched and an “imitation pistol” was found inside (**Board Review 05**).

PO Cepeda prepared Invoice No. § 87(2)(b) for § 87(2)(b)'s vehicle and marked it as arrest evidence (**Board Review 09**). Additionally, property Invoice Nos. § 87(2)(b) for an imitation firearm and § 87(2)(b) for “general property” were prepared.

Patrol Guide Procedure 218-19 (**Board Review 10**). Supervisors should direct that vehicles must be seized and invoiced as arrest evidence when arrests are made for leaving the scene of a collision.

Patrol Guide Procedure 218-13 (**Board Review 07**). Whenever property comes into the custody of the NYPD, officers are to find, via a full search, and inventory the contents of the automobile, cause minimal reasonable damage to the vehicle, and invoice all property in a separate invoice.

§ 87(2)(g)

Allegation (I) Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Anthony Saline refused to provide medical attention to § 87(2)(b)

It is undisputed that § 87(2)(b) requested medical attention at the stationhouse, and that he was not given medical attention.

During his CCRB statement, § 87(2)(b) stated that he was recovering from a surgery at the time of the incident and was using a cane to walk. While he was at the stationhouse, he told PO Saline that he needed the cane to assist him or an ambulance because there was the possibility he'd fall without the cane (**Board Review 05**).

At 24:58 of PO Saline's BWC footage, § 87(2)(b) asks an officer off screen for his cane while in the holding cell at the stationhouse (**Board Review 11**). The unidentified officer informs § 87(2)(b) that he could not have a cane in the holding cell, and in response § 87(2)(b) says, “Alright, I need to go to the hospital, then, because I can't sit in this cell without my cane.”

Patrol Guide Procedure 210-04 (**Board Review 12**). When an individual requires medical attention, officers must request an ambulance to the location.

§ 87(2)(b)'s request was based on the possibility that he would get injured, and not because he needed medical attention. § 87(2)(g)

Allegation (J) Abuse of Authority: Sergeant Jonathan Rivera entered § 87(2)(b) in the Bronx.

Allegation (K) Abuse of Authority: Sergeant Jonathan Rivera searched § 87(2)(b) in the Bronx.

It is undisputed that Sgt. Rivera, PO Cepeda, and additional officers returned to § 87(2)(b) to investigate an allegation that § 87(2)(b) had an illegal weapon. There, PO Cepeda requested permission from § 87(2)(b) § 87(2)(b)'s uncle, to search the location.

The portion of the officers' time at § 87(2)(b) § 87(2)(b) captured by PO Cepeda's BWC depicts PO Cepeda request to search the apartment and § 87(2)(b) consent to the officers searching only § 87(2)(b)'s bedroom (**Board Review 13**). At the 44 second VLC-timestamp § 87(2)(b) says, "You wanna go into § 87(2)(b) room, you're more than welcome. The rest of my house, you're not touching." The officers then immediately entered the apartment and § 87(2)(b)'s bedroom without further inquiry of § 87(2)(b)'s and § 87(2)(b)'s living circumstances.

PO Cepeda independently stated that when he spoke with § 87(2)(b) at the door of § 87(2)(b) § 87(2)(b) gave them permission to search "only" § 87(2)(b)'s bedroom (**Board Review 15**). Sgt. Rivera stated that he did not know whose bedroom § 87(2)(b) gave the officers permission to search (**Board Review 24**). Sgt. Rivera confirmed that it was PO Cepeda who spoke to § 87(2)(b) at the door.

Because § 87(2)(b) is depicted identifying the room as § 87(2)(b)'s and PO Cepeda independently stated that § 87(2)(b) gave the officers permission to search "only" § 87(2)(b)'s room, the investigation determined that the officers knew the room belonged to § 87(2)(b) before they entered the apartment.

People v. Gonzalez, 88 N.Y.2d 289 (**Board Review 16**). "Searching officers" may obtain consent to search where they rely in good faith on the apparent capability of a third-party individual to consent to a search. The burden of establishing "apparent authority" rests upon the state, and a preponderance of the evidence proving that the facts available at the moment "warrant a [person] of reasonable caution" to believe that the consenting party had authority over the target of the search must be shown. If the burden cannot be satisfied, then warrantless entry without further inquiry is unlawful. A mistaken belief as to the law, no matter how reasonable, is not sufficient.

Because Sgt. Rivera and PO Cepeda knew that the room belonged to § 87(2)(b) before officers entered and searched it, they did not have reason to believe that § 87(2)(b) had the requisite authority over § 87(2)(b)'s private space. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 17**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 18**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 19**).
- PO Saline has been a member of service for four years and has been a subject in eight other CCRB complaints and 22 allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Rivera has been a member of service for 10 years and has been a subject in 12 other CCRB complaints and 24 allegations, none of which were substantiated. § 87(2)(g)
- PO Cepeda has been a member of service for five years and has been a subject in two other CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) the sole participating civilian, declined to mediate this complaint.
- As of January 10, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board Review 20**).

• § 87(2)(b)

• § 87(2)(b)

• § 87(2)(b)

Squad No.: **09**

Investigator: Wassim Abedrabbo SI Wassim Abedrabbo October 8, 2020
Signature Print Title & Name Date

Squad Leader: Monique West IM Monique West 10/08/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date